No. 13.

Documents from N. Y. State Union Central Committee.

THE WRIT OF HABEAS CORPUS.

SPEECH

OF

HON. NATH'L W. DAVIS,

OF

TIOGA COUNTY,

In the House of Assembly, March 5, 1863.

Mr. SPEAKER:

The Governor, in his annual message to the Legislature of our State, announces the fact that "we meet, under circumstances of unusual solemnity, to legislate for the honor, for the interest, and for the protection of the people of the State of New York." And I think he should have added, also, to aid in maintaining the honor of our Nation, and in upholding our National existence, and in overthrowing the wicked rebellion that is now desolating our land, and carrying in its trail mourning and deep affliction to the bosom of nearly every family in our common country, and casting a blighting mildew over our future growth and prosperity.

The Governor also remarks: "Not only is our National life at stake, but every personal, every family, every sacred interest is involved." The solemnity of the occasion, and the sufferings of the war, should reanimate *the virtue, the intelligence and the patriotism of the American people. The decay of these* has brought our calamities upon us."

No man is better qualified than the Chief Executive officer of this state to make the solemn declaration he has, when applied to the Democratic party. He has been with that party which has been largely in the ascendency, and which has controlled the destiny of this Nation until virtue and patriotism has ceased, nearly, to exist, and in its dying throes; when these two great elements, virtue and patriotism, had nearly become extinct, sought, through the Chief Executive of the Nation, to dissolve the Government and hand it over to secession and rebellion, and, but for the Republican party and a small portion of the Democratic, which have kept alive virtue and true patriotism, the love of liberty, our National existence would have become extinct.

The Democratic party at the North, through the press and the halls of legislation, have let no opportunity pass to enable it to retain power and place, insidiously to excite a prejudice and engender hatred in the minds of our Southern brethren against the people of the free States, and deeply to impress upon the Southern mind that it was a fixed and settled purpose on the part of a majority of the people of the non-slaveholding states to arrest from them the institution of slavery. This course of conduct was continued until the malignant passion of the Southern mind had become fired and aroused, and so much excited that discussion relative to the question of slavery by those who believed with the founders of our Government and great Republic, and some of our early statesmen, that the institution was inimical to the perpetuity of our National existence, was virtually prohibited in the slaveholding states. And those who claimed that the freedom of speech should not be abridged and dared to venture upon the undertaking, were summarily expelled or ejected from those states, and not unfrequently treated

with the greatest outrage and grossest indignities. This course of conduct was kept up by the Democratic party at the North until the Southern mind had become so inflamed that laws of great harshness and severity were passed, taking away the Constitutional right that "the citizens of each state should be entitled to all the privileges and immunities of citizens in the several states," which, in turn, caused many of the non-holding slave states to pass laws somewhat retaliatory: Personal Liberty bill and bills prohibitory of allowing slaveholders to bring their slaves with them when traveling in the free states, for any period of time, as they were once accustomed to do; breaking up somewhat that amity of feeling that should ever have existed between the slave and non-holding slave states. The slaveholding states by overriding the Constitution and passing harsh and cruel laws by which they seized free and unoffending citizens and cast them into prison, and then sold them into slavery, brought about the passage of the laws of the character before mentioned in the non-slaveholding states.

If this unjust, unholy and wicked rebellion has been caused "by an unavoidable contest about slavery," or that slavery "has been the subject and not the cause of the war," then indeed is the Democratic party responsible for it. It is that party, and that alone, that has brought this awful calamity under which our National existence is now rocking and reeling to its very base.

No political party of any moment, or any importance whatever in the free states, ever claimed that the institution of slavery could be interfered with, but on the contrary uniformly gave its influence in that direction that would uphold it in the states where it existed—and were pledged under the Constitution to defend all and every right that they had secured to them under that sacred instrument, which pledge has sacredly been maintained, even after the rebellion had grown to its greatest enormity. The rebellion has no justification—nor even an extenuating circumstance. The Democratic party always well knew that the Whig party as such were truly loyal and conservative, and adhered with great pertinacity to the Constitution, as has always the Republican; and whenever the Democratic party sought to override it, they entered their solemn protest against it. So it now is with the Republican party as a party. Who is it now that has attempted to destroy the Constitution and is now putting it at defiance, but quite a large proportion who two years since, and at the time of this rebellion, constituted the strength and power of the Democratic party.

It may be asked, did there not once exist an organized Abolition party in the non-slaveholding states that assailed the institution of slavery? I answer, yes. It existed in words, but not in deed. "By their works shall you know them." The law of the civilized world is: A man shall be judged of what he intended by his acts. In 1844 there was an organized political Abolition party that professed to have a hatred to the institution of slavery. The slavery propagandists were desirous of extending the area of slavery by annexing Texas, "the lone star of the South." The Whig party North and South were opposed to extending the boundaries of the United States to extend the slave institution. The Democratic party were its advocates. A great political race was run between the outgoing President, John Tyler, and the incoming President, James K. Polk, as to which should have the honor of completing the contract by which Texas was to become a part of our empire. Tyler, the traitor to his country, had the honor of signing the contract, while Congress performed the deed by a resolve.

The Abolition party then talked loudly and fiercely against the institution of slavery, and denounced it in unmeasured terms, and professed to be violently opposed to it (as do the Democratic party now to arbitrary arrests), and declared that they would not aid the Whigs in preventing the enlargement of the area of slavery. They, with equal vehemence denounced the Democratic party as being venal and corrupt. I will not say that it was done for the purpose of covering up their hypocrisy, lest it be said that I accused them of a want of sincerity. It is true, however, that by their political action they brought about the result that they foresaw must exist, and the very object that the Democratic party most desired. And precisely the same result will be brought about by the conduct of the Democratic party in denouncing the Administration—arraying the people as much as in them lies against it—rendering it odious to them—inducing the people to withhold their support, that it may become weak and feeble and powerless, so that the states in rebellion may divide the Union and dictate their own term of peace.

I have said in substance in some of my preceding remarks that the founders of our Government and some of our early statesmen considered the institution of slavery hostile to the principles of our National Government; that they considered it a great social evil, which should be gradually but certainly eradicated; that it was a relation fatal to industry, false to economy, injurious to morals, and dangerous to liberty. Such were the views of Jefferson, Lee, Tucker, Madison, Washington, Gerry, Mason, Summers, Franklin, Jay, Gaston, Brown, Pinckney, Martin, Henry Clay, Webster, Bronson, Dix, and a great many more. The same or similar views were entertained by the great men of the old world who loved liberty and appreciated its worth. Lord Mansfield, William Pitt, Montesquieu, Brissoit, Grotius, Beattie, Socrates, Plato, Brougham, Burke, Dr. Johnson, Baron Humboldt, Locke, Pope Leo X, and Pope Gregory XVI.

It must be considered, however, that among the latter-day saints of the Democratic party, different views are entertained, promulgated and enforced. It is now contended and urged with great earnestness, "that negro slavery is not only not unjust, it is just, wise and beneficent." "Slavery has no evils; it is an absolute unmixed good, in New York as in Virginia, to the white

man or master as well to the negro." Quite a large portion now of the Democratic party insist with great earnestness that slavery is founded upon the indisputable truths of the word of God; and in obedience to the will of an all-wise and just God they should and ought to carry out his behests and uphold the institution, that the people of this great nation may be peculiarly favored and blessed by the Almighty. Entertaining and cherishing this opinion, it is not to be wondered at that we should have heard upon this floor pretended Democrats assert "that the President's Proclamation for emancipating the slaves of all those who were in open rebellion and hostility to the Government was an open and palpable violation of the Constitution and of our plighted faith to the slaveholding states, and that until openly withdrawn and renounced by the President, no more men would be furnished to increase and strengthen our army, to fight the battles of our country and prevent the overthrow of our national existence. Indeed, is the institution of slavery to be considered paramount to the preservation of the best government that the genius and wisdom of man, aided by Infinite wisdom, has been able to devise? Are the claims of the seceded states to their slaves—they having renounced all allegiance to and renounced all connection with the National Government—paramount, in the estimation of some of our fellow citizens of the loyal states, to the liberties, rights and privileges secured under and by the Constitution of the United States? Are such men loyal? Are they truly patriotic? Do they love constitutional liberty? Do they love our Government and our common country? Are they willing to offer up their lives, if need be, upon its altar, that it may be perpetuated? Or are they sick and tired of it, and, with high-sounding words of loyalty, be the better enabled to deceive the people, and betray them into supposed security, until all that remains of our national existence has been effectually passed into the hands of secession.

If it be true that the President was forced, by the clamor of those who believed that slavery was the cause of the war and the breaking up of the Government, to issue his proclamation to secure the co-operation of those that so believed, ask if the Democrats are honest in the opinion by them expressed, that the proclamation is wholly without effect; that it cannot and will not effect the freedom of a single slave. Would they not, with great and unabated zeal, put forth every exertion that human wisdom was capable of, in aid of the Government to overthrow the rebellion, while the abolitionists were laboring under the delusion, believing the Proclamation to be an effective measure to abolish slavery.

It has been asserted upon his floor, "*that if any more arbitrary arrests were made in this State, there would be a revolution here in the State of New York, and that there ought to be.*" This sentiment was, when uttered, loudly cheered by the people in the gallery and lobbies. In the language of the Governor in his message: "This spirit of disloyalty must be put down. It is inconsistent with all social order; with safety of person and property."

We also find another class of persons, Democrats, so honest and so conscientious, and such great sticklers for the Constitution (who would rather let the Government slide than to step out of it for one moment to rescue it from the hand of the destroyer,) that they could not vote for the passage of a law to legalize the acts of our fellow citizens in raising money, and to repay that which had been borrowed without legal right, to advance to the patriot soldier to enable him to leave his quiet and peaceful home, to enter upon the theater of war in stern reality upon the tented field, to drive back the advancing foe, which was then and is now threatening the destruction of our Nation's existence. Yes, when impending danger was imminent, well indeed may the Governor of our state sound the the tocsin of alarm and cry out: "This spirit of disloyalty must be put down." When danger is imminent, and must be met with force in order to resist it, is there not a law that is paramount to, and overrides all human laws—one that is acknowledged by all nations and in all countries, and universally acknowledged by the whole human family—*the law of self-defense.* He who would withhold the necessary means that he has in his power and under his control, and refuses to allow them to be used in suppressing the rebellion, furnishes aid and comfort to the enemy as effectually as in any other way.

Again the Governor says: "in order to uphold our Government, it is also necessary that we should show respect to the authority of our rulers." "Where it is their right to decide upon measures and policies, it is our duty to obey and to give a ready support to their decisions. This is a vital maxim of liberty; without this loyalty no people can be safe; no government can conduct public affairs with success; no people can be safe in the enjoyment of their rights." "Unusual dangers demand unusual vigilance."

When the present Administration came into power our Nation had been rent in twain; the Constitution had been violated, its principles openly set at defiance, and a portion of the states, in violation of its solemn injunctions, had coalesced and organized a Confederate Government and renounced all allegiance to the General Government. It had seized all of the property belonging to the United States within its bounds and had made ample provisions for resisting the constitutional authority of the General Government, by raising troops, building forts, erecting batteries and providing itself with the munitions of war; and then gave notice to the Federal Government that any attempt made to repossess itself of its property, or any attempt to enforce the laws of the United States, or any effort made to put down the rebellion, would be resisted by force, and any attempt to coerce them into submission until ample time had been given the rebel government to make full and ample preparations for resistance, was to be put down not only by Southern traitors, but by Northern Democrats.

All will recollect the threats made by the Democrats of the North, in case coercion was used.

From the first of November, 1860, (with truth, I might say, from the time and day when Mr. Buchanan was inaugurated President), to the fourth of March, 1861, the rebels had no resistance, nor was any attempt made to arrest their most treasonable schemes, the nucleus of which had been formed many years previous by the societies organized in the South under Yancey, Ruffin and others, known as the "Leaguers of the South," and whose motto was "A Southern Republic is our only safety." Mr. Yancey impressed upon his fellow-citizens, to enable them to overthrow the National Government, that they must "organize committees of safety all over the Cotton States (and it is only in them, he says,) that we can hope for any effective movement. We shall fire the Southern heart—instruct the Southern mind—give courage to each other, and at the proper moment, by our organized and concerted action, we can precipitate the Cotton States into a revolution." During the administration of Mr. Buchanan, I say, they had undisputed sway. They were left by a worse than traitorous Executive to mature and organize a government based upon slavery, slavery being its chief corner-stone, that they could more effectually destroy and dismember the parent Government; all which outrages were allowed under the hypocritical declaration of the President that he had no constitutional power to arrest them in their most treasonable acts. Miserable man! He has fallen so low that even the ergot of treason would blush to do him reverence. Oh! what will not, and what wickedness cannot be done under the name of Democracy. Judas betrayed his Lord and Master with that emblem of love, purity and fidelity, a kiss, into the hands of his enemy. Where was the burning patriotism that should ever fire up the soul of the Democrat? It had become extinct. Treason had eradicated it from his bosom if it ever had had a lodgment there, of which, I confess, there is much doubt in the public mind. I have heard an honorable gentleman assert upon this floor "that the name of Democrat was synonymous with patriot." Oh! patriot, how low indeed hast thou fallen; though crushed to earth yet thou shall rise in all thy resplendent beauty and glory, and shed once more thy genial rays into the heart of all our citizens and invigorate them with patriotic fire; that fire which shall consume and destroy treason as the fire burneth the stubble.

Suppose, Mr. Speaker, Congress had not "*provided for calling forth the militia to execute the laws of the Union*, suppress insurrection and repel invasion," had the President no power vested in him as the head and Chief Executive officer of the Nation? Will it be contended that he had none? No, never, by any man who loves his country. It is a duty incident to superintending the common defense and preserving the internal peace of the Nation.

The President, by the Constitution, is Commander-in-Chief of the army and navy of the United States and of the militia of the several states when called into the actual service of the United States. Justice Story says: "The command and application of the public force, to execute the laws, to *maintain peace* and to resist foreign invasion, are powers so obviously of an Executive nature, and require the exercise of qualities so peculiarly adapted to this department, that a well organized Government can scarcely exist when they are taken away from it. Of all the cases and concerns of the Government the *direction of war* most peculiarly demands those qualities which distinguish the exercise of power by a single hand. Unity of plan, promptitude, activity and decision are indispensable to success, and these can scarcely exist, except when a single magistrate is entrusted exclusively with the power." *Vide Journal of Convention*, 225, 295, 362, 383. 1 *Kent's Com., Sec.* 13, *page* 264. *T. Elliot Deb't*, 103. *The Federalist, No.* 74.

The President is invested with the sole and exclusive power of judging when the exigency has arisen that requires the militia to be called forth. 12 *Wheaton's Rep.*, 19, 29, 30. 5*th Howard*, 37. This question was practically settled as early as 1794.

There are many incidental powers that belong to the President which are necessarily implied from the nature of the functions confided to him. Among those must necessarily be included the power to perform them without any obstruction or impediment whatever. In the exercise of some of his political powers he is to use his own discretion, and is accountable only to his country and to his own conscience. His decision in relation to these powers is subject to no control, and his discretion, when exercised, is conclusive.

After the wasting away of a large number of the Army of the Potomac in the Chickahominy swamps, and the rescuing of what remained from its total annihilation by the rebel army through the strategy of General Pope in making his feint on Gordonsville, the President found it necessary to resuscitate the army, the whole army, by fresh levies; he immediately issued his call for three hundred thousand, and soon after for three hundred thousand more, and a time was fixed by which the recruits were to be raised by volunteering; and if there should not be the requisite number obtained in this way, then, under the recent act of Congress, a draft was to be made to make up the deficiency. When that order was issued there immediately commenced a stampede among cowards and traitors to expatriate themselves from their country, and some more courageous than others threatened to resist the draft, and endeavored to prevent men from enlisting both by word and deed, and to denounce the Administration and indirectly to aid and assist the rebels by preventing enlistment and urging men subject to militia duty to leave the United States. In the language of the Governor of our state, the period had arrived when "unusual danger demanded unusual vigilance." The President, following the principles contained in the examples set by Congress in 1777, and also of him "who was first

in war, first in peace, and first in the hearts of his countrymen," issued an order prohibiting the people leaving their state to get rid of the obligations they owed to their country in the hour of its greatest peril; and also ordering the arrest of persons guilty of treasonable and disloyal conduct, and as to those suspended the privilege of the writ of *habeas corpus*. Who sought to leave their country? A Republican? No. That would be a gross libel upon the name and character of the Republican party. Republican, that's a term synonymous with loyalty and true patriotism. Who were caught in the meshes of the order before mentioned? I answer none except those who deeply sympathised with treason and who by their disloyal conduct were retarding and preventing the Government obtaining the requisite force desired with which to overthrow the rebellion.

The power of putting forth this extraordinary remedy against these evils which would otherwise destroy the Government, is in itself, says Tytler, "one of the greatest blessings which we owe to our free Government." Of such temporary restraint on the natural liberty (says Tytler) of the subject none will ever complain but those to whom that restraint is necessary. It has ever been deemed right and just in times of imminent danger to extend power beyond the law upon the principle of absolute necessity.

Washington caused men to be arrested and removed from the State of Pennsylvania for seditious language. He caused the arrest of twenty gentlemen of high respectability in Philadelphia, and to be removed to Virginia, where they were detained.

On the 26th of August, 1777, Congress passed the following resolution. *Vide Journal of Congress, Vol.* 3, *page* 350.

"*Resolved*, That the Executive authorities of the States of Pennsylvania and Delaware be requested to cause all persons within their respective states notoriously disaffected, forthwith to be apprehended, disarmed and secured, till such time as the respective States think they may be released without injury to the common cause."

This resolution was preceded by a recital:

"*Whereas*, the principles of policy and self preservation require that all persons who may reasonably be suspected of aiding or abetting the cause of the enemy may be prevented from pursuing measures injurious to the general weal."

April 17, 1777, on application of the delegation from the State of Maryland, Congress passed a resolution appointing a committee of four to devise ways and means of suppressing the spirit of toryism in the counties of Summerset, Worcester and Sussex, and preventing them from taking measures prejudicial to the cause of the United States.

On the 19th of April the committee made their report, recommending the Executive authorities of the States of Delaware and Maryland to forthwith apprehend and remove all persons of influence or of desperate character within the counties before mentioned who have beurayed or manifested a disaffection to the American cause, to some remote or secure place or places within their respective states, there to be secured without any person having access to them, unless by license first obtained from such civil or military officer of the prison, appointed, &c.

April 22, 1777, a resolution passed Congress notifying Governor Trumbull, of Connecticut, that William Franklin, Governor of New Jersey, and who was then a prisoner in Connecticut for seditious conduct, and who had been taken from New Jersey to Connecticut and confined there, during which time he promulgated there his seditious sentiments. The Governor of Connecticut was requested forthwith to order the said William Franklin into close confinement, prohibiting to him the use of pen, ink and paper, or the access of any person or persons but such as are properly licensed for the purpose.

Our country was then struggling as now for liberty. I should, perhaps, say to preserve that sacred right; and shall it be said and will it be said, that we should be any the less vigilant now in preserving it than we were in obtaining it, and have we not more Tories now than then. Lincoln, like Washington, feels disposed to arrest treason in the now loyal states before it gets such a foothold as to bear powerful sway. Like Jackson, also, who put down the monster in 1832 in South Carolina the moment it raised its impious head; and like Washington too, who, on the 22d of April, 1793, by the unanimous advice of his cabinet, issued his proclamation for bidding the citizens of the United States not to take any part in the hostilities then existing between Great Britain and France; warning them againt carrying goods contraband of war, &c. *Wait's American State Papers;* 5 *Marshall's Life of Washington, chapter* 1, *page* 406-8; 2 *Story on the Constitution*, § 1570.

The framers of the Constitution adopted the plan, says a distinguished jurist, of "checks and balances," forming separate departments o Government, and giving to each department separate and limited power. These departments are co-ordinate and co-equal, that is, neither being sovereign, each is independent in its system, and not subordinate to the others; no arbiter was established among them, they were left each independent and free to act out its own granted powers without any ordained legal superior, possessing the power to revise and reverse its actions.

The powers of the judiciary are specially granted and defined by the Constitution, Art. 3, § 2. It is the especial duty and function of the judiciary to hear and determine cases, not to "establish principles" nor "settle questions" so as to conclude any person but the parties and privies to the cases adjudged. The court is not even bound by its own decisions. It often overrules and disregards them when subsequent light and reflection convinces it of its errors.

The Executive department—composed of one man alone, and the only department of our Government that is so organized—the President, is charged with a greater range and variety of power and duties than any other department.

The President, as the Chief Executive officer of the nation necessarily holds an active position

and must be active, the duties of his office require it. He is often called upon to take the initiative; he must begin operations.

His great function is execution, for he is required by the Constitution "to take care that the laws be faithfully executed." Not part of the laws, but all laws, and in the exercise of that power or function, his duties are co-extensive with the laws of the land. He is required by the Constitution, before entering upon the duties of his office, to take and subscribe the following oath: that he "will faithfully execute the office of President of the United States, and will, to the best of his ability, preserve, protect and defend the Constitution of the United States."

By article 2, § 1, of the Constitution, all of the executive powers of the nation are expressly vested in the President. The President has certain prerogative powers that are specially delegated to him, in the Constitution; for example, the pardoning power, the appointing power, the veto power, the treaty making power, &c. The executive power is granted generally and without particular specification. By article 2, § 3, of the Constitution, the solemn injunction is imposed upon the President, "*he shall take care that the laws be faithfully executed.*" The President then is intrusted with the high, responsible and sacred duty of supporting, preserving, protecting and defending the Constitution, and seeing that the laws be faithfully executed. To enable him to do this, he is made Commander-in-Chief of the army and navy, and invested with power to call forth the militia that the laws may be executed, when opposed by force, and to suppress insurrection and invasion. To aid the President in the discharge of this function of his office, at an early period Congress passed laws that the militia be called out when combinations were too powerful to be suppressed, by the ordinary course of judicial proceedings or by the powers vested in the marshals.

The President is required to preserve the Constitution, he is required to put down the rebellion. The manner in which he shall do it is not prescribed, but the means which he is to use are the army and navy (means of power and force). They are placed at his disposal, and with those he is to put down the rebellion and preserve the Constitution. He is to use his own discretion as to the manner in which he will use the means placed at his command, and be governed as each exigency shall arise. It was, no doubt, deemed prudent and wise on the part of the President when he found emissaries and spies conveying information to the insurgents and furnishing them with supplies, to cause their arrest (as in 1777) and imprisonment, and this may, no doubt, be done, either for the purpose of bringing them to punishment for their crimes, or they may be held in custody for the milder end of rendering them powerless for mischief until the exigency is past. No man can now even comprehend the extent and magnitude of this rebellion that is now desolating the land. One day, in certain localities it will disappear, and all seems to be quiet and the people in the full fruition and enjoyment of all their rights; when all apparently is thus secure, it again appears in their midst with renewed vigor and energy.

We see it, too, frequently cropping out in the loyal states in certain localities, and although a small spark of it at first, if not immediately extinguished, would soon get strong and bold enough to break forth with great power and desolating force. It is the duty of the President to suppress the first dawning of treason, and of all loyal men to interpose and come to his aid. Had James Buchanan been governed by the oath he had taken and rendered extinct the first dawning of the rebellion in South Carolina, as it was his duty to do, this wicked and unrighteous war would never have had an existence Now, every state in our Union is poisoned and infected, more or less, with aiders and abettors to the rebellion. Under such circumstances, and in such a state of affairs, "the President must, of necessity, be the sole judge, both of the exigency which requires him to act, and of the manner in which it is most prudent for him to employ the powers intrusted to him, to enable him to discharge his constitutional and legal duty; that is, to suppress the insurrection and execute the laws, and this discretionary power of the President is fully admitted by the Supreme Court in the case of Martin *vs.* Mott, 12 *Wheaton's Rep., page* 18; 7 *Curtis*, 10."

The President is the chief civil magistrate of the Nation, and being such, and because he is such, he is the constitutional Commander-in-Chief of the army and navy; and thus, within the limits of the Constitution, he rules in peace and commands in war, and at this time he is in the full exercise of both powers.

After a most careful examination I am of the opinion that in case of a great and dangerous rebellion like the present, which is devastating our land, the public safety requires the arrest, confinement, trial and conviction of persons implicated in it by furnishing aid, comfort or assistance to those guilty of treason, whether they be near the scene of operations or far remote, and that the President has lawful power and authority to suspend the privilege of the writ of *habeas corpus* to those persons arrested under such circumstances, he being especially charged by the Constitution with the "public safety," and he is the sole judge of the emergency that requires his prompt action. Congress having omitted to provide for such a case it must be an incidental, if not an inherent right, under such circumstances.

Will it be contended for a moment that when the emergency is such that it becomes necessary for the President to call forth the militia to execute the laws and surpress insurrection, and a portion of the insurgents have been captured and placed in confinement, that the writ may be issued to the President to bring the insurgents before the judge "*to do, submit to, and receive whatever the said judge shall consider in that behalf?*" I deny that, under such circumstances, he is under any obligation to respond to the writ.

Will it be contended for a moment by any

member of the Democratic party, notwithstanding it is alleged that the President cannot suspend the writ of *habeas corpus*, that the persons taken in arms against the Government as prisoners of war, are entitled to the privileges of the writ? Will it be said that in such a case that no man shall be deprived of his "personal liberty except by due process of law?"

Will it be said that the person thus taken in arms, and in another state, while resisting the laws, and brought to a loyal state for safe keeping and for trial in the state where the offense was committed, when the rebellion shall be put down? May he demand his release from imprisonment, under the Constitution, and would the writ of *habeas corpus* be effectual for that purpose? The offending person has not been committed by any process kindred to the common law, but by military power—martial law—not military law. No one will pretend but that, in such case, the personal liberty of him who is taken in rebellion must be restrained. And it is right that it should be. And yet the Constitution does not mention the right so to do. Will it be said that it is a gross usurpation of power on the part of the President?

During the period of the Dorr rebellion in Rhode Island, the question was considered by the Supreme Court in the case of Luther *agst.* Borden, 7 *Howard's Reports*, 1, 45, *et sequiter* The President recognized the old government of the state in opposition to the one sought to be established by the insurrectionists headed by Dorr. Martial law was declared throughout the State of Rhode Island, and the President called forth the militia to put down the rebellion. Men were seized and cast into prison, and otherwise deprived of their personal liberty. The power of the writ of *habeas corpus* was invoked, and during the investigation of Luther vs. Borden, who had brought his action to recover damages for an alleged unlawful arrrest, the court, in giving its opinion, discussed several of the most important topics treated of in this opinion, and among them the power of the President alone to decide whether the exigeney exists, authorizing him to call out the militia under the act of 1795. The court affirmed the power of the President in that respect, and denied the power of the court to examine and adjudge his proceedings. Chief Justice Taney said if the court had the power and should come to the conclusion that the President had erred, then it would become the duty of the court to discharge those who were arrested or detained by the troops in the service of the United States or the Government which the President was endeavoring to maintain. *If, says the court, the judicial power extends so far, the question contained in the Constitution of protection against insurrection is a guaranty of anarchy and not of order.* The same doctrine is also maintained and recognized by the following authorities: 2 *Story on the Constitution* §§ 1199 *to* 1213, and many cases referred to in the Notes. Also, *Fleming* vs. *Paige*, 9 *Howard*, 615; *also, Cross* agst. *Harrison*, 16 *Howard*, 189; 7 *Wheaton*, 305; *Martin* vs. *Mott*, 12 *Wheaton*, 29.

The Democratic party ought not to complain of the President and charge him with overriding the Constitution and the laws in his great zeal to preserve the Government. They being such great admirers of constitutional and civil liberty, they should lend their whole energies to him in aid of the Government and arrest the slightest symtom of disloyalty. But instead of this, it is to be feared that the course which they are now pursuing tends but to revolutionize our own Government and furnish aid and comfort to the enemy.

President Jackson seized the purse of the nation and wrested it from the hands of the legal and constituted authority and placed it elsewhere; removed the officer in charge and placed another in his stead because he believed he saw that it was not safe in the place where it had been placed by the law of the land. For this piece of high-handed usurpation, he received the condemnation of one of the most enlightened and intelligent body of men that ever sat in the council of our nation. He declared the United States Bank to be unconstitutional and had no legal existence, notwithstanding the solemn judgment of the highest judicial tribunal of our land to the contrary. He declared it was his duty as the chief Executive of the nation to give such a construction to the Constitution as he, in his judgment, believed to be right. During the period which he held that high office, the nation condemned the act of the Senate of the United States, and required that the record of censure should be erased and that the condemned should do it with his own hand.

He declared martial law when he believed danger to be imminent at New Orleans; not from the people of the city, but from the British army that was advaneing towards that place; he wanted help to resist their advance, hence he pressed them into the service, and imprisoned a judge for interfering with his mandate. Jackson was prosecuted and fined one thousand dollars, and in 1844, I, as a member of the legislature of this state, voted in common with others for a resolution asking Congress to refund the money to him with interest. It was done, and the Nation approved of the power exercised of declaring martial law and suspending the writ of *habeas corpus*—nor was the act disapproved of by the President of the United States. How much more should the Nation, especially the loyal citizens, approve of and ratify the efforts made by the present chief Executive of the Nation in his efforts quietly to suppress disloyalty in the Empire State as elsewhere. He follows the noble examples of our fathers of 1777—and of the Saviour of the world—when the woman was brought to him who by law was to be stoned to death for the crimes she was guilty of, her accusers that were without fault were directed to cast the first stone; not a stone was thrown, and she was commanded to depart in peace and sin no more.

The Governor again says in his message: "I shall not inquire what right states in rebellion have forfeited, but I deny that this rebellion can

suspend a single right of the citizens of the loyal states." What a declaration from the chief Executive officer of our state. "Not a single right of the citizens of the loyal states to be suspended," is the declaration true? Did the Governor, at the time he penned that declaration, believe it to be true? What a sweeping declaration, and how untrue. "Not a single right of the citizens of the loyal states suspended!" Are the citizens of the "loyal states" now secured or allowed to enjoy those high constitutional rights mentioned in article 4, section 2 of the Constitution, that "the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states?" Are not the rights of all loyal citizens of the loyal states at present suspended that they are entitled to in those states (that are in rebellion) in common with the citizens of those states? Are not the rights of creditors of the loyal citizens of loyal states in regard to enforcing the collection of demands against their debtors residing in the rebellious states suspended? Can they be enforced? "Is full faith and credit given in each state to the public acts, records, and judicial proceedings of the others?" Most assuredly they are not. Are the citizens of the loyal states permitted to enjoy the right of free egress and regress into Virginia, or any of the states that have thrown off their allegiance to the Government of the United States? No one pretends it.

The Governor assails the Proclamation of the President issued on the first day of January, 1863, as being wholly unwarranted, and the sole effect of it is to emancipate the slaves of those who are not in rebellion and who are loyal citizens. If this declaration or assertion was true, then indeed would the Proclamation be a high-handed piece of usurpation on the part of the Executive of the Nation. The assertion is not only untrue, but, so far as we have the means at present of judging, not sustained. The Proclamation, by its very language, extends to those states and parts of states only that are in rebellion. What right have we to say that there are many men in the Confederate Government in those states and parts of states to which the Proclamation applies, owning slaves, that are loyal to the National Government? Is not the evidence against any such presumption? I so believe.

The Governor arrives at his conclusion from the fact that Congress passed a law, which received the President's signature, July 17, 1862, entitled An act to suppress insurrection, to punish treason, and rebellion, to sieze and confiscate the property of rebels, and for other purposes. That portion of the act evidently alluded to by the Governor is as follows:

"§ 9. And be it further enacted, That all slaves of persons who shall hereafter be engaged in rebellion against the government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons, or deserted by them and coming under the control of the Government of the United States; and all slaves of such persons found or being within any place occupied by rebel forces and afterwards occupied by the forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.

"§ 10. And be it further enacted, That no slave escaping into any State, Territory or the District of Columbia from any other State, shall be delivered up, or in any way impeded or hindered of his liberty, except for crime or some offence against the laws, unless the person claiming said fugitive shall first make oath that the person to whom the labor or service of such fugitive is alleged to be due is his lawful owner, and has not borne arms against the United States in the present rebellion, nor in any way give aid and comfort thereto; and no person engaged in the military or naval service of the United States shall, under any pretence whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or surrender up any such person to the claimant, on pain of being dismissed from the service."

The Proclamation is made the pretext and not the cause of assailing the Administration, and threatening to withhold men and means from its support. It is not the cause that has aroused the hatred and excited the bitter opposition of the so-called Democratic party. The Proclamation reaches no further than the act of Congress referred to, nor any further than the laws of war fully authorize. The Proclamation, if it has any effective force whatever beyond the act of Congress or the laws of civilized warfare, I have failed to see it.

It would not be uncharitable to say that the real cause of the opposition is because the institution of slavery is more sacred in their estimation than constitutional liberty. Slavery, an institution that the founders of our Government and many of our great statesmen considered hostile to the principles of the Government, one of great social evil, which should be gradually but certainly eradicated; that it was a relation false to industry, false to economy, injurious to morals and dangerous to liberty.

Among the latter day saints of the Democratic party different views are entertained, cherished and promulgated. Charles O'Conor, speaking for the Democracy, at least of the state of New York, avers "*that negro slavery is not only not unjust—it is just, wise and beneficent.*" These are the views now, no doubt, of a large portion of the Democratic party. In fact, it is not denied but admitted, and we now have a petition before this Legislature praying the establishment of slavery in this state. But a few days since one of the leading Democratic papers of this state asserted that "slavery has no evils; it is an absolute, unmixed good in New York as in Virginia, to the white man or master as well as the negro." Of such is the language of the "Caucasian," and also of the honorable gentleman from New York, Mr. Hutchings. The institution is now supported upon the principle that it has for its chief corner-stone the word of God; that it is a duty paramount to all others that it be sacredly upheld and maintained.

If the Proclamation has no binding effect and cannot, and will not, liberate one slave, nor be the means of doing it any faster than our army advances into the country of the insurgents, why complain of this meaningless and powerless act of the President? The President, for wise purposes in his estimation, issued it. He be-

lieved it would be a makeweight in weakening the enemy and an incentive to calling into active service more men. Most assuredly, then, if the Democrats love our Government and are honestly in favor of overthrowing the rebellion, they should now, while those that would not aid until the Proclamation was issued, meet them with earnest enthusiasm in defense of the Government. Many of us may not thought it wise or best to have issued the Proclamation. The President was the sole judge; and it was his duty to do what he, in his judgment, believed would have a strong tendency to weaken the power of the rebellion.

For the purpose of putting down and overthrowing this rebellion, it is universally conceded that the principles that govern civilized warfare (if that expression is admissible) are to govern the conduct of each opposing party. The war on the part of the United States is just and humane; unjust and wicked on the part of the enemy (the seceding states). The Government has the right to employ all the means which are necessary to overthrow its enemies—to repress injustice and violence, and forcibly to compel him who is deaf to the voice of justice. We have a right to put in practice against the enemy every measure that is necessary, in order to weaken him and disable him from resisting us, and supporting his injustice; and we may choose such measures as are the most efficacious and best calculated to attain the end in view.

Bynkershoek, an acknowledged author of the laws of war, says: "It is a question whether our friends are to be considered our enemies, when they live among the latter, say in a town which they occupy." "For my part I think they must also be considered as enemies, *certainly* as to the goods which they have within the hostile territory, therefore those goods may be properly taken by us by this law of war, if they have been before taken by the enemy. *We may* lawfully take all that belongs to the enemy, and those goods are a part of the enemy's dominion, which, as they may be useful to them, may be hurtful to us." "If we take nature for our guide—that great teacher of the law of nations—we shall find that everything is lawful against an enemy as such. A nation which has injured another, is considered, with everything that belongs to it, as being confiscated to the nation that has received the injury. To carry that confiscation into effect may certainly be the object of the war, if the injured nation thinks proper; nor is the war to cease as soon as she has received a reparation or equivalent for the injury suffered."

It is conceded by all nations, and all standard writers upon the laws of war, and laws of nations, and of international law, that it is just, right and proper to make use of all weapons to overthrow an unjust war, to take life, destroy property, seize all property that can or may be useful; in fine, do everthing which shall deprive them of their means, that would be useful to them in prosecuting their object. The Democrats acknowledge all this to be just, with one exception, that's the negro; that is too sacred a piece of property to be captured or made use of in overthrowing the rebellion. I say property, because the slave has been declared so to be by the highest tribunal in the land. By the Democratic party, he is held far higher in the scale of human beings than the white man, he is not even allowed to be placed in danger's way, but is to be placed upon the pinnacle of security, and far removed from danger, *except when used by our enemies and then it is all right.* I have no such feelings for the slave; I do not think him, to say the *least*, superior to the white man, and when necessity required it, I would make them useful in overpowering the enemy. If the President's Proclamation should have the effect to take from rebellion all of its power and force, except the slaves, then it would have been just and equitable, and within his legitimate war power, in the opinion of the Democracy. The right of self-defense belongs to nations as well as to individuals, and they may use force when and so far as may be necessary to prevent a threatened aggression or menaced injury, to protect their essential rights, or procure redress for important and national wrongs. 3 *Webster's Works*, 207, 211; *Wheat. Hist. L. N.*, 338; *Wheat. Int. L.*, 36, 37; *Vattel, b.* 3, *ch.* 8, §§ 136, 137; *Id., b.* 4, *ch.* 4, § 43; *Id., b.* 3, *ch.* 3, § 26.

All justifiable wars rest on self-defense. They must, in effect, be wars of defense, though a defensive war may be carried on by invading the territory of the enemy. *Vattel, b.* 3, *ch.* 1, §§ 3, 4; *ch.* 3, § 25; *ch.* 13, § 201, and while in the enemy's country, we have the right to levy contributions to sustain our army, and make a complete indemnity to ourselves. *Vattel, Wheaton on L. N.* In the time of our war with Mexico, at the ports we had seized, a duty was imposed and collected and sustained by the Supreme Court of the United States. 8 *How. R.*, 603-614; 4 *Wheat. R.*, 254; 16 *How. R.*, 164.

The title to personal property of an enemy, captured on land by a military power, vests in the captors after twenty-four hours' possession, without any legal condemnation. *Vattel, b. ch.* 13, § 186; 11, 168, *p.* 385, 6 *Am. ed.; Wheat. Int. L., P.* 4, *ch.* 2, §§ 11, 12, *p.* 432.

The Governor says in his message "our Union must be restored complete in all its parts. No section must be disorganized beyond the unavoidable necessities of war." "The vigor of war will be increased when the public mind and energies are concentrated upon the patriotic, generous purpose to restore our Union for the common good of all sections." Was it not and is it not the purpose and object of the Administration to overthrow the rebellion and establish peace for the express purpose of restoring "the Union for the common good of all sections." When the Governor says "the Union must be restored," "and our armies in the field must be supported, all constitutional demands of the General Government must be responded to." With these declarations we are lead to suppose that the Governor and his political party are to withdraw their factious opposition to the Ad-

ministration and at once lay aside all political differences and unite their whole energies with the Republican party and make common cause against our common enemy, and that no other party shall be known than the party of the whole people, outside of the Confederate States, wedded together by the bonds of brotherly love and affection, marching on shoulder to shoulder against those in rebellion until the rebel spirit shall be put down and they shall cry for peace; and then, and not until then, let peace be spoken, and although the rebels make the following declaration and exclamation in regard to their reunion with the Federal Government, viz.:

The Richmond Dispatch waxes furious upon this topic. It exclaims:

"Reconstruction. Can they reconstruct the family circles which they have broken—can they reconstruct the fortunes which they have scattered—can they reconstruct the bodies of our dead kindred, which by tens of thousands they have destroyed? When they can do this they can reconstruct the old Union."

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"*We warn the Democrats and Conservatives of the North to dismiss from their minds at once the miserable delusion that the South can ever consent to enter again, upon any terms, the old Union. If the North will allow us to write the Constitution ourselves, and give us every guarantee we would ask, we would sooner be under the Government of England or France than under a Union with men who have shown that they cannot keep good faith, and are the most barbarous and inhuman as well as treacherous of mankind.*

"If the Reconstructionists want peace, they can easily have it upon the terms on which they could have always had it—letting us alone. We ask neither more nor less. We are making no war on them. We are not invading their territory, nor giving their homes to the flames, their population to prison and the sword, their women to a fate worse than death. Let us alone! That is all we ask. Let us alone, and peace will return once more to bless a distracted land! But do not expect us to degrade ourselves and cast dishonor upon the graves of our kindred by ever returning to the embrace of those whose hands are dripping with the tears and blood of our people."

The infamous Wm. L. Yancey, who is a member of the rebel Senate, recently introduced a series of resolutions, of which the following is one:

5. "The Government of the Confederate States, in consideration of the change in public sentiment which has occurred in several of the Northern States, wherein political elections have been recently held—sympathizing most kindly with those by whose manly exertions that change has been brought about, would be willing to conclude a just and honorable peace with any one or more of said States who (renouncing all political connection with New England) may be found willing to stipulate for desisting at once from the further prosecution of the war against the South, and in such case the Government of the Confederate States would be willing to enter into a league, offensive and defensive, with the states thus desisting, of a permanent and enduring character."

Those who carried the election alluded to should make haste to repudiate this classification, or forever hereafter endure meekly the asseveration that they are "sympathizers with the rebels." Has Yancey made a mistake in regarding the reactionist Democrats as friends of the secessionists?

Let us not rashly, or from the pride of a prophetic spirit, conclude that this beautiful Government, formed by our fathers and transmitted to us unimpaired, is, with the mighty empires of antiquity, and the ill-constructed governments of later times, destined to inevitable and speedy dissolution. To an ardent wish for its perpetual duration, let us add the only means of securing it, the abandonment of party bickering and a perfect union of the hearts and minds and a united and settled purpose on the part of all those who love liberty and that are willing to pledge their lives, their fortunes and sacred honors in its defense and in the overthrow of the rebellion. Then, and not until then, may we hope for peace and a happy reunion of the States.